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IN THE

Supreme Court of the United States

October Term, 1978

No. 78-1183

CARBON FUEL COMPANY,

Petitioner,

vs.

UNITED MINE WORKERS OF AMERICA; DISTRICT 17, UNITED MINE WORKERS OF AMERICA; AND LOCAL UNIONS NOS. 6572, 7626 AND 2236, UNITED MINE WORKERS OF AMERICA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
To The United States Court of Appeals
For the Fourth Circuit

BRIEF IN OPPOSITION

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RESTATEMENT OF QUESTION PRESENTED

Can parent labor unions be responsible for unauthorized "wildcat" strikes when the uncontroverted evidence shows that the parent unions did not start or participate in the stoppage and took steps to end them?

COUNTERSTATEMENT OF THE CASE

The Respondents (the unions) accept the Statement of the Case by the Petitioner coal company with minor corrections.[1] In addition to Petitioner's statement that "none of the strikes was *formally* called or authorized by the unions", it must be noted that the record does not contain any evidence of informal or indirect authorization or ratification. As is stated at Pet. 3, the unions had a policy against striking.

The uncontradicted evidence introduced by the unions at trial showed that upon the occurrence of a stoppage, the union representative from respondent District 17 would attend the local meeting and urge the men to return to work and would continue his efforts until a return to work was achieved. The district representatives contacted the local union officials to evaluate the situation, attended the local union meeting, limited the discussion to the unauthorized stoppage and continued his efforts until the stoppage was over. Those efforts to end stoppages were the "highest priority" of the District.

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[1]District 17, UMWA and the local unions of UMWA were not, at least after the onset of district and local union autonomy, as is stated at Pet. 2 and 3, "administrative sub-divisions" of the International. For a detailed explanation of the three-tier structure of the UMWA and the functional autonomy which exists between the tiers, see cases cited at footnote 2. Respondents believe there was just as much, or more, evidence that the efforts made by the union were not "futile", contrary to the assertion at Pet. 3. The statement that the grievance and arbitration machinery encompasses "all imaginable disputes" and the further assertion, also at Pet. 3, that disputes outside the employer/employee relationship involved "a dispute over the extent of the no-strike obligation under the contract" is argumentative and was in effect overruled by the Court of Appeals, see A-2 — A-5, 582 F.2d at 1348-9. The issues raised therein are not addressed further inasmuch as they are not raised by the petition.

Restatement of Question Presented—The parties sharply disputed what would have happened if the unions had taken action to discipline the membership and to suspend or revoke local union charters upon the occurrence of unauthorized stoppages. The unions' testimony tended to prove that such steps would be counterproductive.

Even though the court below did state that the unions would not be responsible if they "did nothing", the uncontradicted record demonstrates that the unions consistently took steps to end stoppages. The narrow question on the record and Petition before the Court is, therefore, whether the unions were contractually obligated to take steps beyond those already taken — which the unions regarded as drastic and counterproductive — to end stoppages the unions neither started nor encouraged.

REASONS FOR DENYING THE WRIT

Respondents will answer the arguments made in the petition in reverse order.

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1. THE RULING BELOW IS ENTIRELY CONSISTENT WITH SUBSTANTIVE FEDERAL LABOR POLICY WELL ESTABLISHED BY THIS COURT, THE COURTS OF APPEALS AND THE NATIONAL LABOR RELATIONS BOARD.

The ruling of the Court of Appeals, that parent unions are not responsible for strikes which they neither authorize nor ratify, has deep and historic roots in federal labor law and policy. In *United Mine Workers v. Coronado Coal Co.*, 259 U.S. 344 (1921), this Court held that the UMWA International Union was not legally responsible for the illegal acts of affiliates, UMWA districts and locals. Speaking for the majority, Mr. Chief Justice Taft stated:

> "The argument of counsel for the plaintiffs is that, because the national body had authority to discipline district organizations, to make local strikes its own, and to pay their cost, if it deemed it wise, the duty was thrust on it, when it knew a local strike was on, to superintend it and prevent its becoming lawless at its peril. We do not conceive that such a responsibility is imposed on the national body.

259 U.S. at 395. The then-Chief Justice continued:

> "But it is said that the district was doing the work of the International and carrying out its policies, and this circumstance makes the former an agent. We cannot agree to this in the face of the specific stipulation between them that in such a case, unless the International expressly assumed responsibility, the district must meet it alone."

259 U.S. at 395.

The 1955 decision of the Fourth Circuit in *United Construction Workers v. Haislip Baking Company*, 223 F.2d 874 cert. denied 350 U.S. 847, which was restated verbatim by the Court below (A-9 and 10, 582 F.2d at 1351), and the 1958 decision of the Sixth Circuit in *Lewis v. Benedict Coal Corp.*, 259 F.2d 346, 351, aff'd evenly divided Court, 361 U.S. 459 (1958), hold that — even when a parent union negotiated the contract in question[2] — it, in the words of then Judge, and now Mr. Justice Stewart:

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[2]The three-tier structure of the UMWA was described in some detail at *Hodgson v. UMWA*, 344 F.Supp. 17, 20, 29 and 344 F.Supp. 990, 993-94, 997-98 (D.D.C. 1972).

> remained free from liability for spontaneous or "wildcat" strikes. . . .
>
> * * *
>
> . . . The real issue is whether the district's agent did induce the strikes in question.

259 F.2d at 351. *Benedict* and *Haislip* form the core of the rulings of the Fourth and Sixth Circuits as well as the Fifth and Seventh Circuits, that the parent UMWA union is not responsible for work stoppages which it neither authorizes nor ratifies. *United States Steel Corporation v. UMWA*, 519 F.2d 1249 (5th Cir. 1975); *Southern Ohio Coal Company v. UMWA*, 551 F.2d 695 (6th Cir. 1977), cert. denied 434 U.S. 876 (1977); *Old Ben Coal Corp. v. Local 1487, UMWA*, 457 F.2d 162, 164-5 (7th Cir. 1972).[3] Hereinafter that body of law, which was specifically de-

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[3]The unions neither understand nor agree with the company's position, stated at Pet. 7, n. 2, that the holdings of the Fifth and Seventh Circuits, are not clear. The *Old Ben* decision of the Seventh Circuit simply notes that even though a strike might be in breach of the implied no strike duty, the union would not be responsible unless the strike was also authorized or ratified. That is, the union would not be responsible for "spontaneous or 'wildcat' strikes" even if they were over matters "subject to the settlement procedures of the grievance". 457 F.2d at 175. *Old Ben* draws heavily on the *Benedict* decision and leaves no doubt that it applies and follows the *Benedict-Haislip* rule.

The decision of the Fifth Circuit in *U. S. Steel* follows and adopts the *Benedict-Haislip* rule, but adds an evidentiary ruling that a pattern of practice might prove informal authorization or ratification. The following portions of the Fifth Circuit's opinion make it clear that the Fifth Circuit followed the *Benedict-Haislip* rule: (1) language that the union must make "itself a party to the strike" to be responsible, 519 F. 2d at 1251-2; (2) the rejection of specific affirmative action requirements, 519 F.2d at 1255-6; (3) the holding that the fact of a strike does not raise a presumption of union responsibility, 519 F.2d at 1253; and (4) the lengthy discussion of the requirements for proof of authorization or ratification and the remand for further consideration of that point. 519 F.2d at 1253-56.

cided in matters involving the national UMWA agreements and wildcat strikes in the coal industry, will be referred to as the *Benedict-Haislip* rule.

The repeated use of the word "agent" by this Court in *Coronado,* supra, at p. 4, and the requirement of the application of the ordinary rules of agency in *UMWA v. Gibbs,* 383 U.S. 715, 736 (1966), leave no doubt that the *Benedict-Haislip* requirement, that one of the two bases of liability under the law of agency — authority or ratification — must be present if the parent union to be held responsible, is completely in step with the rulings of this Court. The National Labor Relations Board has followed and applied the same rule. *Franklin Electric Construction Cooperative,* 121 NLRB 143, 145-46, 42 LRRM 1301, 1303 (1958). Finally, the principal commentator on the scope and meaning of Section 301 of Taft-Hartley, 29 U.S.C. 185, Professor Archibald Cox, has written:

> It is clear that [Section 301 does] not impose on labor unions a responsibility beyond that imposed by normal rules of agency. . . . Consequently, just as a corporation is not liable for the acts of a stockholder, so recognition of a labor organization as a juristic personality prevents imposing liability for the acts of its members.
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> * * *
>
> . . . in dealing with local affairs, including local strikes and boycotts, a local union ordinarily acts as separate entity in pursuit of its own affairs.

Cox, *Some Aspects of the Labor Management Relations Act, 1947,* 61 Harv. L. Rev. 274, 308, 310, 312 (1948).

When weighed against the strength of the *Benedict-Haislip* rule, Petitioner's argument that the "decision below

conflicts with principles enunciated by this Court" must fail.

A narrow problem with the employer's argument at Pet. 12-13 is that it begs the issue now in controversy — whether there is a breach of contract or not, i.e. whether the unions did "break agreements". The ruling below that the District and International Union did not break any agreements is based on the *Benedict-Haislip* rule and is, therefore, entirely consistent with principles enunciated by this Court.

Petitioner also suggests that the federal labor policy of uninterrupted operation during the term of the agreement is at stake. Aside from the fact that there was no express agreement as to uninterrupted operation, the further problem with Petitioner's argument is that it mentions only one facet of the federal labor policy and it ignores other well-established federal labor policies including those favoring the establishment and continued existence of labor unions. As the Sixth Circuit recognized in one of its more recent cases applying the *Benedict-Haislip* rule, *North American Coal Corporation v. Local 2262, UMWA,* 497 F.2d 459, 466 (6th Cir. 1974), departures from the ordinary rules of agency of *Benedict-Haislip* could mean the destruction of labor unions.

> It has been clear to Congress for many years that imposition upon unions of vicarious liability or the unauthorized acts of individuals could easily mean elimination of labor unions as a social institution in America. . . .
>
> Irresponsible or violent acts by individual workers (or by agent provocateur) if automatically attributable to the union on the scene could, of course, serve to destroy it.

2. THE CASE BELOW WAS DECIDED ON THE BASIS OF WELL-ESTABLISHED CIRCUIT AUTHORITY AND DOES NOT REQUIRE REVIEW OR ENUNCIATION BY THIS COURT.

Petitioner's second argument, that there is an important and recurring question of federal law which has not been, but should be, decided by this Court, ignores the breadth of support for the *Benedict-Haislip* rule by four Courts of Appeals and focuses on the evolving and immature law of the Third Circuit.

The question dealt with by the Fourth Circuit, and for which certiorari is sought, involves claims for strikes which have already happened and which have been litigated to final judgment. The authority cited prominently by Respondent, *Bituminous Coal Operators Association v. UMWA*, 585 F.2d 586 (3rd Cir. 1978), by and large[4] deals with anticipated stoppages which have not yet occurred. It involves coal operators with operations in more than one circuit, unlike the single operator petitioner's operations in a single state and circuit, and, most importantly, deals with the outer limits of *prospective* relief in multi-employer settings.

Although the case before this Court has been fully litigated, as is pointed out at Pet. 8, it is equally true that the *Bituminous Coal Operators* case is anything but completely litigated. It is on remand, the Third Circuit having reversed *dismissal* of motions for injunctive relief, for record development of unknown dimensions. 585 F.2d at 597, 599. While *Bituminous Coal Operators* is suggestive of a deviation from the *Benedict-Haislip* rule, the immaturity and lack of definition of the intra-circuit authorities, discussed herein, undermines Petitioner's argument that the question presented in this case presents an important and recurring question of federal law. Also, the record herein does not provide a sound basis for testing the emerging law of the Third Circuit since the Petition and record herein does not concern prospective relief, multiple employers or multi-state or circuit situations.[5]

[4]Some individual coal companies in the *Bituminous Coal Operators* case did seek damages in addition to prospective relief. 585 F.2d at 597, 599. Those cases appealed a *dismissal* of prayers for injunctive relief and the opinion addresses only the question of injunctive relief. The discussion of the case at Pet. 10 and the authorities cited is limited to the major aspect of the case seeking innovative prospective relief.

3. THE DECISION BELOW IS NOT IN DIRECT CONFLICT WITH DECISIONS OF OTHER COURTS OF APPEALS.

Petitioners contend that the holding below is in "direct and acknowledged" conflict with two decisions of the Third Circuit and one decision of the Eighth Circuit.

Notwithstanding language that a union is required "to use its best efforts to return striking workers to their jobs," it is clear from both the district court and circuit decisions that liability in *Wagner Electric Co. v. Local 1104 Electrical Workers*, 496 F.2d at 956 (1974), was based on fact findings that the strike was informally authorized or rati-

[5]The citation of *Teamsters v. Lucas Flour Co.*, 369 U.S. 95 (1962), at Pet. 9 concerning the need for "uniform law" is inappropriate because *Lucas Flour* discussed whether to apply state or federal law in a state labor case and ruled that federal substantive labor law applied to cases tried in state court. The *Benedict-Haislip* rule is well-accepted, virtually uniform federal law. Critically, *Lucas* cited approvingly both *Benedict* and *Haislip*. 369 U.S. at 105, n. 13.

fied.[6] The Court of Appeals affirmed under Rule 52(a), FRCP, and ruled that union responsibility was based on:

> the circumstances surrounding the union meetings, the involvement of union officials and stewards in initiating the strike

and other factors. 496 F.2d at 956. Accordingly, the Eighth Circuit simply affirmed fact findings of *informal* ratification or authorization consistent with *Benedict-Haislip*.

Although the decision of the Third Circuit in *United States Steel Corporation v. UMWA*, 534 F.2d 1063, 1071-4 (1976) does contain some language concerning affirmative efforts to end strikes, it is distinguishable from the case now before the Court in several regards and does not, therefore, constitute a direct and meaningful conflict among the decisions of the Courts of Appeals.

The dissenting Judge on the panel in that case would apparently apply the rule of *Benedict-Haislip* inasmuch as the contract violations would require evidence that the District or International "ordered, approved or even con-

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[6]The District Court found that the strike began after a special union meeting was called and that union leaders who attended the meeting were seen "beckoning to employees to leave the plant." After that meeting, the employees did begin leaving. Thereafter, a union Executive Board Member told the employees not to cross a picket line at a gate. The district court also stressed: (1) the "rather strong language" denouncing the employer at the union meeting, (2) the timing of the onset of the stoppage shortly after the important first union meeting and (3) the fact that the underlying grievance was a "union" as distinguished from an "individual" grievance. *Id.*, 661 F.Supp. 647, 648-51 (Ed. Mo. 1973). None of the above facts are present in this record.

doned the action of the local". See 534 F.2d at 1084.[7] Although the two concurring Judges on the panel did speak in terms of legally required affirmative efforts to end stoppages, one of the Judges clearly limited his opinion to injunctive relief.

> (T)here is an enormous difference between holding the unions financially liable for the wildcat activities of possibly unruly members, and directing entities to take steps to specifically perform the contract . . . We have no occasion . . . to consider the extent, *if any*, to which the members' actions *may* make the UMW (International), District 5, . . . liable in damages. Preliminary injunctive relief was appropriate on this record even if under *ordinary agency principles* they would not be liable for such damages.

534 F.2d at 1074 (emphasis added) (Gibbons, J).

The concurring Judge apparently limited his discussion to "an injunction proceeding" and did not mention damage liability. 534 F.2d at 1080 (Rosenn, J.). The question of damage relief was not even before the Third Circuit as the case was an appeal from an interlocutory injunction. 534 F.2d at 1066. *Boys Markets, Inc. v. Retail Clerks, Local*

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[7]The failure of the Third Circuit to apply the ordinary rules of agency in *Eazor Express, Inc. v. Teamsters*, 520 F.2d 951 (1975), cert. denied 424 U.S. 935 has been criticized:

> . . . [S]ince Congress subjected the unions to responsibility only in accordance with the common law rules of agency, a duty to use all reasonable efforts to end a wildcat strike should not be imposed unless it is firmly grounded in the contract.

Comment, 89 *Harv.L.Rev.* 601, 609 (1976). See also 605 esp. n. 30 and, 607 text at n. 45 and 609 notes 58 and 59. The same criticism applies to both the Third Circuit decisions, *U. S. Steel* and *Republic*, relied on by Petitioner.

770, 398 U.S. 235, 248 text at n. 17 (1970) suggested that different considerations may govern the damage and injunctive forms of relief in the labor setting. Accordingly, the conflict, if any, between a ruling on the law of union responsibility applicable to damages and that applicable to injunctive relief is not a "direct and acknowledged" conflict with decisions of other courts of appeals and is, indeed, no conflict at all.

Republic Steel Corporation v. UMWA, 570 F.2d 467 (3rd. Cir. 1978) holds that summary judgment in favor of the UMWA International was erroneous in a situation where miners from one mine "picketed" a second, unrelated mine. The theory of the Third Circuit was that since the pickets belong to the same International Union, the International (but not the District or the Locals involved) would be responsible. See, 570 F.2d at 477-79. The case was remanded for further development of the record. 570 F.2d at 478-9.

Although *Republic Steel* is unique in the annals of the law of union responsibility, it is not a final decision on a final record. Because of its uniqueness and its interlocutory nature, it raises more questions than it answers.[8] Critically, the case below was simply not presented on the theory that the International Union has some newly-argued contractual obligation to deal with multi-mine problems. Although the Court below did squarely reject the application of *Republic Steel* (see A-8, 582 F.2d at 1350 n.4), the question simply

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[8]For example, how is the International Union in Washington to be notified of isolated picketing activities of miners from one time to another in rural Pennsylvania and what steps can the parent union reasonably take to deal with that situation. The case was remanded for development of factual questions as to the nature of the picketing and, apparently, the efforts of the International to end the stoppage.

was not presented to the trial court and is not raised on this record.

Whatever conflict the Third Circuit may, or may not, ultimately develop with the *Benedict-Haislip* rule followed by other circuits will have to be decided on a record, unlike the one in this case, which contains the "integrity of contract" arguments made in *Republic Steel*, and which involves inter-company and interstate activities and requests for prospective relief — none of which are present on record herein.

In sum, the unions conclude that there is no conflict between the Courts of Appeals. At worst to the unions, the decisions of the Third Circuit are suggestive that there may be a conflict of decisions in the future. The Third Circuit cases are part of an evolving and, at the present time, immature body of case law more indicative of *intra*-Circuit differences[9] than anything else. By contrast, the rulings applying and following the *Benedict-Haislip* rule are clear and longstanding. There is, therefore, no meaningful conflict and certiorari should be denied.

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[9]The decisions within the Third Circuit conflict sharply on the question of the responsibility of unions for unauthorized stoppages. One opinion appears to follow the *Benedict-Haislip* rule outright. *Penn Packing Co., Inc. v. Meat Cutters, Local 195*, 497 F.2d 888, 891 (1974). At least one Judge, Judge Gibbons, on the panel of *U. S. Steel* decision, discussed at length in text at p. 11 above, would apply *Benedict-Haislip* to damage actions. Although Judge Maris in *Eazor Express, Inc. v. Teamsters*, 520 F.2d 951, 960-963 (3d Cir. 1975), cert. denied 424 U.S. 935, limited the "all reasonable efforts" standard to collective bargaining agreements containing express no-strike agreements, on the strength of *Haislip Baking*, Judges Gibbons and Rosenn in *U. S. Steel*, supra., found his ruling to be dictum or "inopposite precedent" on the question of injunctive relief. See 534 F.2d at 1073 and 1079 n. 1. The panel in *Republic Steel*, supra, cites *Eazor Express* (570 F.2d 467), but does not cite the *U. S. Steel* decision mentioned above, and, critically, does not even attempt to explain its expansion of *U. S. Steel* into damage actions.

CONCLUSION

Wherefore, the Respondents pray that the petition for a writ of certiorari be denied.

Respectfully submitted,

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